

JUL 03 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE JUAN MARTINEZ-GUEVARA,

Defendant - Appellant.

No. 07-50560

D.C. No. CR-04-01055-W

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted June 18, 2008^{**}

Before: REINHARDT, LEAVY, and CLIFTON, Circuit Judges

José Martinez-Guevara appeals the sentence imposed upon revocation of his supervised release. He contends that the district court's judicial fact findings in support of the revocation sentence were unconstitutional under *Apprendi v. New*

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Jersey, 530 U.S. 466 (2000). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

In *United States v. Huerta-Pimental* we upheld the constitutionality of the supervised release scheme set forth in 18 U.S.C. § 3583. *United States v. Huerta-Pimental*, 445 F.3d 1220, 1221 (9th Cir.), *cert. denied*, 127 S. Ct. 545 (2006).

Martinez-Guevara contends that *Huerta-Pimental* was undercut by *Cunningham v. California*, 127 S. Ct. 856 (2007) (invalidating California's determinate sentencing law), and no longer is good law. This contention is foreclosed by *United States v. Santana*, No. 07-50190, 2008 WL 2178132, at *5 (9th Cir. May 27, 2008).

AFFIRMED.